

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CONNIE LINDGREN,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. SUSP-99-0019

)

) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

)

)

)

)

)

)

)

)

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Airport Ramada Inn, in Spokane, Washington, on January 19, 2000.

1.2 **Appearances.** Appellant Connie Lindgren appeared *pro se*. Respondent Department of Social and Health Services was represented by Patricia A. Thompson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a one-week suspension for willful violation of agency policy as the result of Appellant allowing three developmentally disabled clients to remain without on-site staff supervision for a five-hour period.

1.4 **Citations Discussed.** Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

## II. FINDINGS OF FACT

2.1 Appellant Connie Lindgren is a Program Manager and permanent employee for Respondent Department of Social and Health Services with the State Assisted Living Alternative (SOLA) Program. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 4, 1999.

2.2 By letter dated June 18, 1999, Laurie Zapf, Regional Administrator for the Division of Developmental Disabilities, informed Appellant of her one-week suspension for willfully violating SOLA policy and labor/management agreements as the result of Appellant allowing three developmentally disabled clients to remain without on-site staff supervision from approximately 12:30 a.m. to 5:30 a.m. on March 7, 1999.

2.3 Appellant began her employment with the state of Washington in 1976. Appellant has no prior history of formal or informal disciplinary action. As a SOLA Program Manager, Appellant has responsibility for overall administration and development of the Region 1 SOLA Program, including oversight of the hiring and training of new SOLA employees.

2.4 The facts of this case are not in dispute. On March 7, 1999, Appellant was the pager supervisor for six SOLA sites. As the pager supervisor, Appellant's responsibilities required her to arrange for coverage of staff calling to report an absence or late arrival to work. Appellant was aware that effective June 1996, a labor/management agreement required that the night shift at six SOLA sites have a minimum of one staff member on duty at each site between the hours of 10 p.m. and 6 a.m. The six sites consist of three duplex homes.

1 2.5 On March 7, the night shift was scheduled as follows: Sites #1 through #5 were staffed with  
2 one staff person each and site # 6 was staffed with two staff members.

3  
4 2.6 At approximately 12:15 a.m., Appellant received a page from Connie Youmens, an  
5 Attendant Counselor, who was working with Attendant Counselor Robin Mahome at site #6. Ms.  
6 Youmans informed Appellant that program participant TQ was ill. As a result of his illness, TQ  
7 was taken to the emergency room. Appellant authorized both Ms. Youmans and Ms. Mahome to  
8 escort TQ to the hospital since TQ was difficult to manage. Appellant called the staff person  
9 working at site #5, which adjoined site #6, and asked her to work between the two sites.

10  
11 2.7 Appellant was aware that SOLA Policy #530 required her, as the pager supervisor, to  
12 schedule relief staff whenever staff was absent from their regularly scheduled work shift. Policy  
13 #530 outlines the procedures on how relief staff are to be obtained. The policy further provides that  
14 when the pager supervisor is unable to find other staff to cover a shift, he/she is responsible for  
15 completing the shift. In this case, Appellant was aware site #6 did not have the required staff  
16 member on site, however, Appellant made no attempt to find relief staff to supervise the site nor did  
17 she cover the shift herself. Site #6 remained without a staff member until 5 a.m. when staff for the  
18 morning shift reported for work.

19  
20 2.8 Two of the three program participants that lived in site #6 and remained unsupervised on  
21 March 7 suffered from seizure disorders and the other had a history of wandering around at night.

22  
23 2.9 Laurie Zapf, Regional Administrator for the Division of Developmental Disabilities, was  
24 Appellant's direct supervisor and was the appointing authority. In assessing what level of  
25 discipline to impose, Mr. Zapf considered Appellant's high level of responsibility as a manager to  
26 understand and adhere to agency policy and her responsibility to ensure that appropriate staffing

1 levels were maintained. When evaluating the incident which occurred on March 7, Mr. Zapf saw  
2 no mitigating reasons for Appellant's failure to arrange for staff relief to report to the SOLA site or  
3 her failure to cover the shift herself. Mr. Zapf also considered that in July 1997, he gave Appellant  
4 a directive that minimum staffing numbers were to be met according to labor/management  
5 agreements and agency policy. Mr. Zapf weighed Appellant's long tenure with the department and  
6 her excellent work history with the SOLA program, however, based on Appellant's clear  
7 understanding of her responsibility to ensure that staffing levels were met, Mr. Zapf concluded that  
8 a one-week suspension was the appropriate sanction.

### 10 **III. ARGUMENTS OF THE PARTIES**

11 3.1 Respondent argues that Appellant willfully violated SOLA Policy #530 and a  
12 labor/management agreement which required that staffing minimums not drop below six with one  
13 staff person at each site. Respondent argues that Appellant's responsibilities required that she get  
14 coverage but that Appellant did not call other staff to work at site #6 nor did she cover the shift  
15 herself. Respondent argues that Appellant had knowledge of the policy and procedures for  
16 minimum staffing, that her failure to follow policy and procedure resulted in three developmentally  
17 disabled program participants remaining alone for five hours and that her actions undermined the  
18 division's credibility with the union. Respondent argues that a one-week suspension is appropriate.

19  
20 3.2 Appellant does not dispute the charge that staffing levels fell below the minimum, however,  
21 she denies that she willfully violated policy and argues that the sanction is too severe in light of her  
22 long and exemplary history with the department. Appellant argues that client health and safety  
23 were not compromised, and that she was exhausted after working approximately 60 hours and had  
24 slept only a few hours when she received the page on the early morning of May 7. Appellant  
25 asserts that she made the best possible decision under the circumstances and ensured that staff from  
26 the adjoining duplex would periodically check on site #6. Appellant contends that she attempted to

1 make a decision that was in the best interest of the clients but that she unknowingly violated the  
2 letter of the law.

#### 3 4 **IV. CONCLUSIONS OF LAW**

5 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
6 herein.

7  
8 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
9 the charges upon which the action was initiated by proving by a preponderance of the credible  
10 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
11 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
12 Corrections, PAB No. D82-084 (1983).

13  
14 4.3 Willful violation of published employing agency or institution or Personnel Resources  
15 Board rules or regulations is established by facts showing the existence and publication of the rules  
16 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
17 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

18  
19 4.4 Labor and management jointly established a protocol which required each SOLA site to  
20 have a staff member present between the hours of 10 p.m. and 5 a.m. Policy #530 establishes the  
21 order in which the pager supervisor is to arrange for relief staff whenever staff are absent or tardy.  
22 Respondent has met its burden of proof that Appellant violated Policy #530 when she failed to  
23 ensure that minimum staffing levels were met on May 7, 1999. However, we conclude that a one-  
24 week suspension is too severe. Factors that mitigate the discipline are Appellant's long and  
25 excellent work performance with the SOLA Program and the fact that Appellant had no prior  
26 corrective action (either formal or informal). These mitigating factors notwithstanding, Appellant's

1 failure to adhere to agency policy warrants disciplinary action. We find that a one-day suspension  
2 is sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the  
3 integrity of the program. Therefore, the disciplinary sanction of a one-week suspension should be  
4 modified to a one-day suspension.

5  
6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Connie Lindgren is modified  
8 to a one-day suspension.

9  
10 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

11  
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

13  
14 \_\_\_\_\_  
15 Walter T. Hubbard, Chair

16  
17 \_\_\_\_\_  
18 Gerald L. Morgen, Vice Chair